IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Plaintiff,

v. Case No. 17-cv-136 (RHK/FLN)

KLEINBANK,

Defendant.

JOINT MOTION REGARDING CONTINUED SEALING

Documents have been filed under temporary seal in connection with Defendant's Motion to Dismiss, ECF No. 18. Pursuant to LR 5.6, the parties submit this Joint Motion Regarding Continued Sealing and attachment Appendix A, in which the United States sets forth the material it asserts is improperly redacted.

DKT. NO.	DESCRIPTIO N OF DOCUMENT		K" IN APPL COLUMN	ICABLE	NONPARTY THAT DESIGNATED DOC. CONFIDENTIAL (IF	REASON WHY DOCUMENT SHOULD REMAIN SEALED OR BE
		Parties Agree Doc. Should Remain Sealed	Parties Agree Doc. Should Be Unsealed	Parties Disagree	ANY)	UNSEALED
[24]	Excerpts from 2010 Federal Deposit Insurance Corporation ("FDIC") Document	X			KleinBank asserts that Docket 24 is confidential property of the FDIC. See 12 C.F.R. § 309.1 et seq. Federal regulations and the FDIC prohibit disclosure of Docket 24, or information contained therein, to individuals or entities outside of the FDIC without the FDIC's express authorization. See 12 C.F.R. § 309.6. Further, under 12 C.F.R. § 309.7, the FDIC must be notified of any subpoena or legal process seeking the disclosure of confidential records and provide authorization to disclose. Disclosure of records outside of the FDIC's authorization could subject KleinBank or others to penalties.	KleinBank asserts that Docket 24 must remain under seal to comply with federal regulations and the FDIC's limited authorization. Federal regulations prohibit public disclosure, see 12 C.F.R. §309.6, and the FDIC has provided limited authorization to disclose the excerpts contained in Docket 24 to the Authorized Parties only, conditioned on the documents being filed under seal. The FDIC has specifically prohibited disclosure of the entire report to the Authorized Parties. Accordingly, if the DOJ seeks access to the entire report, DOJ must request and obtain additional authorization

[25]	Example from	V		For the purposes of this litigation, KleinBank requested limited authorization from the FDIC to disclose the excerpts contained in Docket 24. Pursuant to KleinBank's request, the FDIC provided limited authorization to disclose the excerpts contained in Docket 24 to the Department of Justice ("DOJ"), this Court, and any appellate court that should subsequently have jurisdiction over this or related actions only (the "Authorized Parties"). The FDIC has not granted permission to disclose the full report to the Authorized Parties. The FDIC's limited authorization was also conditioned on KleinBank filing the document under seal to protect from public disclosure.	from the FDIC pursuant to applicable regulations. See 12 C.F.R. § 309.6. The United States does not dispute the confidentiality of this document or that it is proper for the document to be sealed. KleinBank sought permission from the FDIC to disclose a total of less than 4 of approximately 17 pages of the report, rather than the full document, to support its motion to dismiss. The United States argued in its Memorandum in Opposition to KleinBank's Motion to Dismiss that the filing of such heavily redacted excerpts is improper, and asked the Court to disregard this document in considering the motion to dismiss.
[25]	Excerpts from 2013 FDIC Document	X		KleinBank asserts that Docket 25 is confidential property of the FDIC. See 12 C.F.R. § 309.1 et seq. Federal regulations and the FDIC prohibit disclosure of Docket 25, or information	KleinBank asserts that Docket 25 must remain under seal to comply with federal regulations and the FDIC's limited authorization. Federal regulations prohibit public

contained therein, to individuals or entities outside of the FDIC without the FDIC's express authorization. See 12 C.F.R. § 309.6. Further, under 12 C.F.R. § 309.7, the FDIC must be notified of any subpoena or legal process seeking the disclosure of confidential records and provide authorization to disclose. Disclosure of records outside of the FDIC's authorization could subject KleinBank or others to penalties.

For the purposes of this litigation, KleinBank requested authorization from the FDIC to disclose the excerpts contained in Docket 25. Pursuant to KleinBank's request, the FDIC provided limited authorization to disclose the excerpts contained in Docket 25 to the Department of Justice ("DOJ"), this Court, and any appellate court that should subsequently have jurisdiction over this or related actions only (the "Authorized Parties"). The FDIC has not granted permission to disclose the full report to the

disclosure, see 12 C.F.R. § 309.6, and the FDIC has provided <u>limited</u> authorization to disclose the excerpts contained in Docket 25 to the Authorized Parties only, conditioned on the documents being filed under seal. The FDIC has specifically prohibited disclosure of the entire report to the Authorized Parties. Accordingly, if the DOJ seeks access to the entire report, DOJ must request and obtain additional authorization from the FDIC pursuant to applicable regulations. See 12 C.F.R. § 309.6.

The United States does not dispute the confidentiality of this document or that it is proper for the document to be sealed. KleinBank sought permission from the FDIC to disclose a total of less than 3 of approximately 11 pages of the report, rather than the full document, to support its motion to dismiss. The

Considering the motion to				Authorized Parties. The FDIC's limited authorization was also conditioned on KleinBank filing the document under seal to protect from public disclosure.	Memorandum in Opposition
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[26]	Excerpts from	X	KleinBank asserts that Docket 26	KleinBank asserts that Docket
	2015 FDIC		is confidential property of the	26 must remain under seal to
	Document		FDIC. See 12 C.F.R. § 309.1 et	comply with federal
			seq. Federal regulations and the	regulations and the FDIC's
			FDIC prohibit disclosure of	limited authorization. Federal
			Docket 26, or information	regulations prohibit public
			contained therein, to individuals	disclosure, see 12 C.F.R. §
			or entities outside of the FDIC	309.6, and the FDIC has
			without the FDIC's express	provided <u>limited</u> authorization
			authorization. See 12 C.F.R. §	to disclose the excerpts
			309.6. Further, under 12 C.F.R.	contained in Docket 26 to the
			§ 309.7, the FDIC must be	Authorized Parties only,
			notified of any subpoena or legal	conditioned on the documents
			process seeking the disclosure of	being filed under seal. The
			confidential records and provide	FDIC has specifically
			authorization to disclose.	prohibited disclosure of the
			Disclosure of records outside of	entire report to the Authorized
			the FDIC's authorization could	Parties. Accordingly, if the
			subject KleinBank or others to	DOJ seeks access to the entire
			penalties.	report, DOJ must request and
				obtain additional authorization
			For the purposes of this	from the FDIC pursuant to
			litigation, KleinBank requested	applicable regulations. See 12
			authorization from the FDIC to	C.F.R. § 309.6.
			disclose the excerpts contained in	
			Docket 26. Pursuant to	
			KleinBank's request, the FDIC	The United States does not
			provided <u>limited</u> authorization to	dispute the confidentiality of
			disclose the excerpts contained in	this document or that it is
			Docket 26 to the Department of	proper for the document to be
			Justice ("DOJ"), this Court, and	sealed. KleinBank sought

	any appellate court that should	permission from the FDIC to
	subsequently have jurisdiction	disclose a total of less than 4
	over this or related actions only	of approximately 11 pages of
	(the "Authorized Parties"). The	the report, rather than the full
	FDIC has not granted permission	document, to support its
	to disclose the full report to the	motion to dismiss. The
	Authorized Parties. The FDIC's	United States argued in its
	limited authorization was also	Memorandum in Opposition
	conditioned on KleinBank filing	to KleinBank's Motion to
	the document under seal to	Dismiss that the filing of such
	protect from public disclosure.	heavily redacted excerpts is
		improper, and asked the Court
		to disregard this document in
		considering the motion to
		dismiss.

[19]	Portions of the	X	KleinBank asserts that Docket 19	KleinBank asserts that Federal
	Memorandum		quotes from, summarizes, and	regulations prohibit disclosure
	in Support of		references Docket 24-26, which	of information contained in
	Defendant's		are confidential property of the	Docket 24-26, including the
	Motion to		FDIC. See 12 C.F.R. § 309.1 et	quotations from, summaries
	Dismiss		seq. Federal regulations and the	of, or references to such
			FDIC prohibit disclosure of	documents in Docket 19. See
			information contained in Docket	12 C.F.R. § 309.6. The FDIC
			24-26 to individuals or entities	has provided <u>limited</u>
			outside of the FDIC without the	authorization to disclose the
			FDIC's express authorization.	excerpts contained in Docket
			See 12 C.F.R. § 309.6; see also	24-26 to the Authorized
			12 C.F.R. § 309.7. Disclosure of	Parties only, conditioned on
			records outside of the FDIC's	the documents being filed
			authorization could subject	under seal. Accordingly,
			KleinBank or others to penalties.	content from Docket 24-26
				has been redacted from the
			Pursuant to KleinBank's request,	publicly-filed version of
			the FDIC provided <u>limited</u>	Docket 19. If the DOJ seeks
			authorization to disclose excerpts	to file such information
			contained in Docket 24-26 to the	publicly, DOJ must request
			Department of Justice ("DOJ"),	and obtain additional
			this Court, and any appellate	authorization from the FDIC
			court that should subsequently	pursuant to applicable
			have jurisdiction over this or	regulations. See 12 C.F.R.
			related actions only (the	§ 309.6.
			"Authorized Parties"). The	
			FDIC's limited authorization was	
			conditioned on KleinBank filing	The United States asserts that
			information contained in Docket	KleinBank's redactions in this
			24-26 under seal to protect from	document are overly broad.

		public disclosure.	The United States does not
			dispute the confidentiality of
		The United States objects to this	quotations or factual
		claim because the FDIC's	summaries of the FDIC
		statement that the documents	documents listed above.
		listed in Docket nos. 24-26	Rather, the United States
		should "remain confidential"	objects to the heavy redaction
		does not apply beyond the	of Defendant's own
		content of the documents	characterizations of the
		themselves.	documents that are not
			supported by the content of
			the documents themselves,
			and Defendant's arguments
			pertaining to its own
			perception of the significance
			of the documents. See Def.
			Mem. Supp. Mot. Dismiss 2,
			8-13, 33-37, ECF Nos. 19, 20.
			KleinBank's redactions go far
			beyond the scope of the
			content of the FDIC
			documents themselves and are
			improper. See id.; see also In
			re Neal, 461 F.3d 1048, 1053-
			54 (8th Cir. 2006) (noting that
			courts favor court filings to be
			publicly available, and
			ordering certain information
			in a filing to be unsealed
			where, as here, a party had
			overdesignated as confidential

				information that did not fall within the narrow statutory prescription for confidentiality).
[21]	Portions of the Declaration of John W. Lundquist in Support of Defendant's Motion to Dismiss		KleinBank asserts that Docket 21 quotes from, summarizes, and references Docket 24-26, which are confidential property of the FDIC. See 12 C.F.R. § 309.1 et seq. Federal regulations and the FDIC prohibit disclosure of information contained in Docket 24-26 to individuals or entities outside of the FDIC without the FDIC's express authorization. See 12 C.F.R. § 309.6; see also 12 C.F.R. § 309.7. Disclosure of records outside of the FDIC's authorization could subject KleinBank or others to penalties. Pursuant to KleinBank's request, the FDIC provided limited authorization to disclose excerpts contained in Docket 24-26 to the Department of Justice ("DOJ"), this Court, and any appellate court that should subsequently have jurisdiction over this or related actions only (the "Authorized Parties"). The FDIC's limited authorization was	KleinBank asserts that federal regulations prohibit disclosure of information contained in Docket 24-26, including the title of or references to such documents in Docket 21. See 12 C.F.R. § 309.6. The FDIC has provided limited authorization to disclose the excerpts contained in Docket 24-26 to the Authorized Parties only, conditioned on the documents being filed under seal. Accordingly, content from Docket 24-26 has been redacted from the publicly-filed version of Docket 21. If the DOJ seeks to file such information publicly, DOJ must request and obtain additional authorization from the FDIC pursuant to applicable regulations. See 12 C.F.R. § 309.6.

conditioned on KleinBank filing	confidentiality of this
information contained in Docket	document because the
24-26 under seal to protect from	document contains no
public disclosure.	confidential information
	protected by the relevant
The United States objects to this	regulation(s). It does not
claim because the FDIC's	"quote[] from, summarize[],
statement that the documents	or reference[]" the
listed above should "remain	confidential FDIC documents
confidential" does not apply	listed above, as KleinBank
beyond the content of the	contends; it states only the
documents themselves.	names and dates of the
	documents and no other
	information.

[35]	Portions of the	X	KleinBank asserts that Docket 35	KleinBank asserts that federal
[oo]	United States'		quotes from, summarizes, and	regulations prohibit disclosure
	Memorandum		references Docket 24-26, which	of information contained in
	in Opposition		are confidential property of the	Docket 24-26, including the
	to Defendant's		FDIC. See 12 C.F.R. § 309.1 et	quotations from, summaries
	Motion to		seq. Federal regulations and the	of, or references to such
	Dismiss		FDIC prohibit disclosure of	documents in Docket 35. See
			information contained in Docket	12 C.F.R. § 309.6. The FDIC
			24-26 to individuals or entities	has provided limited
			outside of the FDIC without the	authorization to disclose the
			FDIC's express authorization.	excerpts contained in Docket
			See 12 C.F.R. § 309.6; see also	24-26 to the Authorized
			12 C.F.R. § 309.7. Disclosure of	Parties only, conditioned on
			records outside of the FDIC's	the documents being filed
			authorization could subject	under seal. Accordingly,
			KleinBank or others to penalties.	content from Docket 24-26
			•	has been redacted from the
			Pursuant to KleinBank's request,	publicly-filed version of
			the FDIC provided <u>limited</u>	Docket 35. If the DOJ seeks
			authorization to disclose excerpts	to file such information
			contained in Docket 24-26 to the	publicly, DOJ must request
			Department of Justice ("DOJ"),	and obtain additional
			this Court, and any appellate	authorization from the FDIC
			court that should subsequently	pursuant to applicable
			have jurisdiction over this or	regulations. See 12 C.F.R.
			related actions only (the	§ 309.6.
			"Authorized Parties"). The	
			FDIC's limited authorization was	
			conditioned on KleinBank filing	The United States has made
			information contained in Docket	redactions that are proper
			24-26 under seal to protect from	pursuant to federal regulations

				public disclosure.	that prohibit public disclosure of certain limited excerpts. <i>See</i> U.S. Resp. 18 n.10, 19, 20, ECF Nos. 35, 36; <i>see also</i> 12 C.F.R. §§ 309.5(g); 309.6(a). These redactions should remain so in the publicly-filed version of this document. The United States has also made redactions pursuant to Local Rule 5.6(c)(2)(B) based on Defendant's improper redactions. <i>See</i> U.S. Resp. 17, 18-19, 25 This information Defendant's arguments and Defendant's own characterizations of the FDIC documents – should not be redacted in the publicly-filed version of this document because it goes far beyond the scope of the content of the FDIC documents themselves.
[38]	Portions of the Reply Memorandum in Support of Defendant's Motion to		X		KleinBank asserts that federal regulations prohibit disclosure of information contained in Docket 24-26, including the quotations from, summaries of, or references to such

[] [] .	T	
Dismiss		documents in Docket 38. See
		12 C.F.R. § 309.6. The FDIC
		has provided <u>limited</u>
		authorization to disclose the
		excerpts contained in Docket
		24-26 to the Authorized
		Parties only, conditioned on
		the documents being filed
		under seal. Accordingly,
		content from Docket 24-26
		has been redacted from the
		publicly-filed version of
		Docket 38. If the DOJ seeks
		to file such information
		publicly, DOJ must request
		and obtain additional
		authorization from the FDIC
		pursuant to applicable
		regulations. See 12 C.F.R.
		\$ 309.6.
		8 307.0.
		The United States asserts that
		KleinBank's redactions in this
		document are overly broad.
		The United States does not
		dispute the confidentiality of
		quotations or factual summaries of the FDIC
		documents listed above. See
		Def. Reply 6, 7, ECF Nos. 38,
		39. Rather, the United States

			objects to the heavy redaction
			of Defendant's own
			characterizations of the
			documents that are not
			supported by the content of
			the documents themselves,
			and Defendant's arguments
			pertaining to its own
			perception of the significance
			of the documents. See Def.
			Reply 1, 4, 6-8. KleinBank's
			redactions go far beyond the
			scope of the content of the
			FDIC documents themselves
			and are improper. See id.; see
			also In re Neal, 461 F.3d at
			1053-54.

Dated: September 29, 2017

s/ Anupama D. Sreekanth

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